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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

STEVE FERRARI, MIKE KEYNEJAD, and
PATRICIA RUBIN, individually and as
representatives of the Class of Persons similarly
situated,

Plaintiffs,

v.

AUTOBAHN, INC. DBA AUTOBAHN
MOTORS; MERCEDES-BENZ USA, LLC;
SONIC AUTOMOTIVE, INC.; AND
SPEEDWAY MOTORSPORTS, INC.

Defendants

Case No.

**NOTICE OF REMOVAL OF ACTION
UNDER THE CLASS ACTION
FAIRNESS ACT, 28 U.S.C. § 1453 *et*
*seq.***

1 TO THE CLERK OF THE ABOVE ENTITLED COURT AND TO ALL PARTIES AND
2 THEIR COUNSEL OF RECORD:

3 PLEASE TAKE NOTICE that Defendant Mercedes-Benz USA, LLC (“MBUSA”) hereby
4 removes this action from the Superior Court of the State of California for the County of San
5 Mateo to the United States District Court for the Northern District of California, Oakland
6 Division.

7 In support thereof MBUSA states as follows:

8 1. This is a putative nationwide class action wherein the amount in controversy
9 exceeds \$5,000,000. Pursuant to the provisions of the Class Action Fairness Act (“CAFA”), 28
10 U.S.C. § 1453 *et seq.*, this case is properly removable to federal court. 28 U.S.C. § 1332(d).

11 2. Plaintiffs Steve Ferrari, Mike Keynejad, Patricia Rubin, Hooshang Jowza, Celso
12 Frazao, Renuka Narayan, Gertrud Frankrone, Ernest Salinas, Kalkhusan Sareen, Hossein Jalali,
13 Ron Wolfe, Sohrab Rahimzadeh, Fred Grant, Ester Grant, Jessica Langridge, Tony Nicolosi,
14 Donald Lyang, Artur Semichev, John Diaz, Harold Fethe and Ray Gapasin filed a Class Action
15 Complaint (“Complaint”) on December 20, 2016. Plaintiffs filed the Complaint on behalf of
16 themselves and on behalf a proposed class of persons comprising:

17 (a) Any person or entity who brought one or more Mercedes-Benz automobiles to
18 Autobahn Motors, in Belmont, CA during the period of 2005-present for repairs and/or
19 maintenance; who received non-OEM/non-genuine/approved Mercedes Benz parts,
20 supplies, and/or oil from Autobahn Motors without the customers' consent; and were
invoiced for OEM parts at OEM prices;

21 (b) All Buyers of pre-owned Mercedes Benz from. Autobahn Motors during the period
2005-present who had zMAX, MOC products, non-approved oil or oil filters, or any other
22 non-OEM product put into their car;

23 (c) All Buyers of automobiles from any dealership of Sonic Automotive [approximately
134] that places zMAX, MOC products, non-approved oil or oil filters, into the used or
24 preowned car inventory during the period 2005-present who had zMAX or any other non
OEM product put into their car;

25 Complaint at ¶ 64. MBUSA was served with a copy of the Complaint and Summons on
26 December 28, 2016.

27 Diversity Jurisdiction Under CAFA

28 3. Enacted to expand federal diversity jurisdiction over purported class actions,

1 CAFA provides that a class action may be removed in accordance with 28 U.S.C. § 1446 if: (a)
2 membership in the class is not less than 100; (b) any member of the plaintiff class is a citizen of a
3 foreign country or a state different from any defendant; and (c) the aggregate amount in
4 controversy exceeds \$5,000,000. *See* 28 U.S.C. §§ 1453(b) and 1332(d).

5 4. CAFA's first requirement—that class membership be no less than 100 (28 U.S.C.
6 § 1332(d)(5)—is satisfied. Plaintiffs allege that Autobahn, Inc. purchased 17,795 non-OEM oil
7 filters that it used in its customers' vehicles (Complaint at ¶ 35), and that “the true number of
8 victims . . . is in excess of ten thousand, which satisfies the numerosity requirement for a class
9 action.” *Id.* at ¶ 39. Accordingly, a reasonable basis exists to conclude that there are more than
10 100 members of the class.

11 5. CAFA's second requirement—that any one member of the purported class is a
12 citizen of a state different from any defendant, (28 U.S.C. § 1332(d)(2)(A))—is also satisfied.
13 Per the Complaint, Defendants Sonic Automotive, Inc. and Speedway Motorsports, Inc. are
14 incorporated in Delaware and have their principal places of business in North Carolina, and
15 Defendant MBUSA is incorporated in Delaware and has its principal place of business in
16 Georgia. Complaint at ¶¶ 31-33. Plaintiffs Ferrari, Keynejad and Rubin are California citizens.
17 Complaint at ¶¶ 4-6.

18 6. CAFA's third requirement—that the aggregate amount in controversy exceeds
19 \$5,000,000 exclusive of interest and costs (28 U.S.C. § 1332(d)(2))—is satisfied as well.
20 Although MBUSA disputes the theories of liability and asserted remedies advanced in the
21 Complaint, Plaintiffs nonetheless seek in the Complaint, among other things, restitution for the
22 purchase price paid by the class of consumers to Autobahn, Inc. for non-OEM oil filters, in an
23 amount totaling \$7,118,000. Complaint at ¶ 122; *see also id.* at ¶ 123 (alleging damages in
24 excess of \$21 million). This amount, without more, puts more than \$5,000,000 in controversy.
25 Accordingly, the Complaint on its face states claims which, if true, far
26 exceed CAFA's jurisdictional minimum.

27 7. In addition, Plaintiffs also seek other damages, including exemplary damages and
28 injunctive relief, which will increase the amount in controversy. *See, e.g., Tompkins v. Basic*

1 *Research LLC*, 2008 WL 1808316, *4 (E.D. Cal. April 22, 2008) (defendants' cost of compliance
2 with an injunction is factored in to the amount in controversy).

3 Intra-district Assignment

4 8. As this action arose in the County of San Mateo, assignment to the San
5 Francisco/Oakland Division of the United States District Court for the Northern District of
6 California is proper. *See* Civil L.R. 3-2(d).

7 Procedural Requirements Under Removal Statute

8 9. The procedural requirements set forth in 28 U.S.C. § 1446 are also satisfied here.
9 Section (a) of that statute requires the removing party to file a notice of removal "in the district
10 court of the United States for the district and division within which such action is pending,"
11 which MBUSA does with this filing. Section (a) also requires a moving party to provide a copy
12 to the district court of all process, pleadings, and orders in the state action. The Complaint,
13 summons, and other documents in MBUSA's possession are attached hereto as Exhibit A.¹

14 10. MBUSA was served with the Summons and Complaint on December 28, 2016.
15 This Notice of Removal is filed within thirty (30) days of said date, and within one year of the
16 date of commencement of the action. Accordingly, MBUSA's filing of this Notice of Removal is
17 timely. *See* 28 U.S.C. § 1446(b)(3).

18 11. Pursuant to 28 U.S.C. § 1446(d), copies of this Notice of Removal are being
19 served upon counsel for Plaintiffs and filed with the Clerk of the Superior Court of California for
20 the County of San Mateo.²

21 Based upon the foregoing, MBUSA therefore respectfully submits: (i) that this Court has
22 diversity jurisdiction under 28 U.S.C. §§ 1332, 1446 and 1453; and (ii) that the procedural
23 requirements under 28 U.S.C. § 1446 are met. As such, this action is properly removable to
24 federal court.

25 _____
26 ¹ In addition to the Complaint and Summons, MBUSA is in receipt of some of Plaintiffs' filings
27 in support of their *ex parte* application for an Order to Show Cause; however, MBUSA is not in
28 possession of the declarations of Raymond Gapasin or Patricia Rubin, and is in possession of only
one declaration of Herman Franck.

² Copies of this Notice of Removal are also being served upon counsel for the other named
defendants.

Date: January 4, 2017

HOGAN LOVELLS US LLP

By: /s/ Robert B. Hawk

Robert B. Hawk

Attorneys for Defendant
Mercedes-Benz USA, LLC